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Supreme Court, U.S.
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No. 02-328

In The

SUPREME COURT OF THE UNITED STATES

In Re A. LIPKO JR.

V.

M. CHRISTIE, E. LIPKO

Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Second Circuit

SUPPLEMENTAL BRIEF

A. LIPKO JR.
P. O. BOX 536
NEW HAVEN, CT 06503
(NO PHONE)

14 pp

TABLE OF CONTENTS

TABLE OF AUTHORITIES, CASES, STATUTES
OTHER AUTHORITIES.....ii

NEW INTERVENING MATTER NOT AVAILABLE
IN PETITION FOR WRIT OF CERTIORARI... 1

ARGUMENT – STANDARD OF REVIEW –
REASONS FOR GRANTING THE WRIT..... 8

TABLE OF AUTHORITIES

CASES

Armstrong v. Manzo, 380 U.S. 545..... 9

Boddie v. Connecticut, 401 U.S. 371..... 10

Carey et al. v. Piphus et al., 435 U.S. 247..... 2

Chemical Bank v. Dana, 234 B.R. 585 (D.Conn 1999)... 6

Cook v. Bieluch, 32 CONN.App. 537, 629 A.2d 1175... 5

Farnam v. Schreiber, 111 CONN. 38, 149 A.39..... 7

Federal. Deposit Ins. Corp. v. Isham, 870 F. Supp. 24 (D.Conn.1994)..... 4

Fine v. Moamjian, 114 CONN. 226..... 6

Fuentes v. Shevin, 407 U.S. 67.....2,3,10

In re Anderson, 166 B.R. 516 (Bankr. D.C onn.)..... 3,4

In re Grand Jury Subpoena Duces Tecum, dated September 15, 1983, 731 F.2d 1032..... 5

Mullane v. Central Hanover Tr. Co. 339U.S. 306..... 9

Norwalk Shore Realty Co. v. Clark, 126 CONN. 688..... 6

Southern Industries, Inc. v. Jeremias, 66 A.D. 2d 178..... 4

U.S. v. Carlin, 948 F. Supp. 271 (S.D.N.Y.)..... 4

Zapolsky v. Sacks, 191 CONN. 194..... 4

STATUTES

CONNECTICUT STATE STATUTES,
52-515-529, Connecticut Replevin Statute, Prejudgment re Plevin..... 3
52-552 Fraudulent Conveyances..... 2, 6

OTHER AUTHORITIES

Rule 25.5..... 1

The Constitution of the U. S. 5th & 14th Amendment.2,9,10

Uniform Fraudulent Conveyance Act.....2,5,7,8

Uniform Fraudulent Transfer Act..... 3,6,7

U.S.C. 42 Sec. 1983..... 9

I. NEW INTERVENING MATTER NOT AVAILABLE IN PETITION FOR WRIT OF CERTIORARI

1. Pursuant to Rule 25.5 of this Court: Petitioner presents intervening matter.

2. The Supreme Court of the U. S. has jurisdiction to review the 2nd Circuit Appeals Court grant of Respondents' motion to dismiss civil rights action. Petitioner sufficiently informed Respondents of Petitioner's intent to appeal the order granting the motion on 6/14/02, App. 1,2.

3. The Judicial Conference of the U.S. has stated in its statistical evaluation of all the 50 Districts of the U.S. that the District of Connecticut is 50th, and the District of Texas is number 1. Texas processes cases the fastest. In Connecticut, the State and Federal Jurists' excuses for the reason why Connecticut cases take the longest is because the Jurists state that Connecticut cases are more complicated and require more time to adjudicate, whereas, Texas only deals with immigration problems from Mexico. From Petitioner's experience in State and Federal Courts, the Jurists have decided against people who come to court acting Pro Se, and others, and deliberately make cases complicated and drag them out. Also, District Court Judge Jade of New York stated that 68% of the judgments are overturned.

4. Mental and emotional distress caused by the denial of procedural due process exists, where Petitioner was denied Review of his case in State Appellate Court on Appeal, A.C.17591 in 1997, and where jurist refused the permanent injunction, but allowed damages, see Petition for the Writ, Appendix 12. The Appellate Court refused the Motion for Review, and Petitioner removed his case to the District Court. In 1998, the Petitioner filed a complaint for abuse of process. Then after the judgment liens were placed

on his properties, in 2000, the State Superior and Appellate Courts refused Review A.C.22365 and dismissed in 2002.

5. Because the right to procedural due process is "absolute" in the sense that it does not depend upon the merits of a claimant's substantial assertions, and because of the importance to organized society, that procedural due process be observed, Carey et al. v. Piphus, et al., 435 U.S. 247, the denial of procedural due process should be actionable for punitive and compensatory damages in Lipko case because of the denial of due process and the State Courts' issuing of sanctions, in the amount of $1,485.00, against petitioner, and the respondents' seizing the petitioner's person and seizing his home on 8/14/02; and fraudulently conveying and transferring the title to Alliance Properties. "It is enough to invoke the procedural safeguards of the Fourteenth Amendment that a significant property interest is at stake...." Fuentes v. Shevin, 407 U.S., @ 87.

6. On 8/14/02, Petitioner left his property in Milford, at 08:00 A.M. He locked the doors, windows and the 5-foot gate with a chain lock. When he came back to his property at 9:00 P.M on 8/14/02, there was a huge chain and padlock on his gate, so that he could not enter his property. Locks were changed. All the desk drawers were missing and papers were all over the floors in the bedroom, kitchen and living room. All records papers were taken. The house was raided, ransacked and completely gutted. The Petitioner's home and property was seized by Respondents, locked up on 8/14/02; including all the family's clothes, food (including ice cream and home made apple pies in the freezer), 2 cars, tools and equipment in the garage. The Petitioner and his family have not been able to return to their home.

7. On 8/17/02 the Petitioner filed a Writ of Certiorari with the Supreme Court, docketed on 9/4/02. The Uniform Fraudulent Conveyance ("UFCA") and Uniform

Fraudulent Transfer Act ("UFTA"): The Courts recognize a variety of different types of actionable fraud. Some courts recognize "actual" and "constructive" fraud--A plaintiff need not prove both actual and constructive fraud to establish a fraudulent conveyance, In re Andersen, 166 B.R. 516 (Conn. Law 1994), while other courts have recognized a "fraud in law" theory. Still other courts recognize "fraud in fact".

8. In the Lipko case, on-4/15/02, supposedly a judge, Moran J. of the Superior Court Milford, foreclosed the Milford property; and Petitioner never got any notice of a hearing on foreclosure. The Milford Superior Court has no jurisdiction, personal or subject matter, over the Petitioner. This matter is under the jurisdiction of the Federal Courts since 3/19/02. This was an ex parte application of a private party who claims a right to the property and is willing to post a security bond. The Connecticut Replevin Statute is virtually identical to the Florida Replevin Statute, which was found unconstitutional in Fuentes v. Shevin 407 U.S 67.

9. The matter of Eleanor Lipko was added on 4/02, but was not picked up by the District Court and added to Petitioner's file as one of the Defendants, and therefore, E. Lipko is not listed as one of the defendants in their computer. The documentation and service are in the file. App. 3.

10. "Constructive fraud" constitutes legal fraud irrespective of actual intent. Others have recognized a "fraud in law" theory which provides that fraud is proven if one claim arose before a transfer, as in the Lipko Case. The UFTA, adopted by numerous states, provides that consideration be given to the following factors; to whether: (1) the transfer or obligation was to an insider; (2) the transfer was concealed; (3) before the transfer was made, the debtor had been sued. Courts recognize "fraud in fact", which is a conveyance where consideration exists for the transfer but an actual intent to defraud exists when the

transferees willingly participate in the fraud. In order to prove actual fraud, there must be existence of persons' intent to hinder, delay or defraud, which is sometimes referred to as "fraud in fact". In re Anderson, 166 B.R. 516 (D.Conn.) permits a court to set aside a conveyance made with such intent, even though fair consideration has been paid, Federal Deposit Insurance Corp. v. Isban, 870 F. Supp. 24 (D.Conn. 1994. The factors courts consider in determining whether or not a person intended to delay, hinder, or defraud may be found in numerous suspicious circumstances which, when considered with other circumstances, may be conclusive of fraud, such as, situations in which the parties are related, (in Lipko case, parties are brother and sisters), whether the conveyance occurs while litigation is anticipated or pending, (in Lipko case, the Supreme Court had jurisdiction of this matter and is docketed in the Supreme Court of the U. S. under #02-328); or whether the transfer is conducted in secrecy or haste, (in Lipko case, the transfer was made on 8/14/02, by Roberta Peck, Realtor, who never notified the owner, Petitioner, who never knew the house was for sale or was sold. Fraudulent intent, which is deception intentionally practiced to frustrate the legal rights of another, Southern Industries, Inc. v. Jeremias, 66 A.D. 2d 178, 411 N.Y.S. 2d 945. Gonillo, and Respondents intentionally frustrated the legal rights of Petitioner, by selling the property to Alliance Properties LLC, on 8/14/02 with a warranty deed. However, direct evidence of fraud is not essential. Fraudulent intent may be arrived at by way of inference or presumption. U.S. v. Carlin 948 F. Supp. 271. In proving intent, the Respondents' motive is not required, and the courts recognize that conveyances can be "actually fraudulent" if made with actual intent, as distinguished from intent which is presumed. Courts recognize that fraudulent intent may be gleaned from the circumstances surrounding the transaction. Zapolsky v. Sacks, 191 Conn. 194.

11. Circumstances tending to excite suspicion as to the unexplained conveyance, will warrant an inference of fraud. In other words, certain circumstances are so commonly associated with fraud as to have earned the title "badges of fraud" and when present in sufficient numbers, they give rise to a presumption of fraud, or the establishment of a prima facie case of a fraudulent conveyance. A badge of fraud, represents a determination of the character of a conveyance as fraudulent based on elements and circumstances that so frequently attend transfers to defraud and these badges form important links in the chain of evidence that fixes the character of the challenged transactions.

12. Examples of badges of fraud include transfers of property during the pendency of litigation, secret or hurried transactions that are not in the usual mode of doing business, any transaction that is conducted in a manner differing from customary methods, transactions where little or no consideration is given in return for transfer, and a transfer of property between family members.

13. Common examples of fraud include unusual, In re Grand Jury Subpoena Duces Tecum, 731 F.2d 1032, and unexplained transactions, as well as conducting of business in an unusual mode. The courts look to see if there was a departure from customary methods, which was inconsistent with honesty and fair dealing, as well as comparing the transaction at hand along with usual circumstances found in bona fide transactions.

14. The UFCA forbids conveyances made without a fair consideration by individuals. Cook v. Bieluch, 32 Conn. App. 537. The terms of the fraudulent transfer statutes: it is not the nature of the transaction, but the presence of fraud, which brings the case within the prohibition of the statutes. Fraud was proven in the Petition. If a course of dealings is contaminated with fraud, the Law

declares it to be a nullity regardless as to whether the contract or conveyance is oral or in writing, or it has been executed by the parties with all the solemnities of deeds.

15. UFTA defines "Transfer" as every mode involuntary of disposing of or parting with an asset or an interest in an asset. Since the courts look with disfavor on fraudulent conveyances, they have generally construed the statutes liberally so as to include within their protection all persons who have interest of which they may be defrauded. UFTA under Connecticut Law: Property obtained by fraud does not actually acquire title to it. Chemical Bank v. Dana, 234 B.R. 585 (D. Conn. 1999).

16. Under the UFTA, a fraudulent transfer may be attacked by either a person whose claim existed at the time of the conveyance, or by one whose claim matured subsequently, inasmuch as, a person having any claim, whether the right is reduced to judgment disputed, legal. The statute thus abrogates the rule whereby a judgment and a lien were essential preliminaries to equitable relief against a fraudulent conveyance.

17. At common law, an attack on a conveyance as being in fraud of the transfer could be made only by persons whose claims existed at the time the conveyance was made. Thus, if a transfer is made with actual intent to defraud, the transaction will be set aside. Norwalk Shore Realty Co. v. Clark, 126 CONN. 688.

18. In order for subsequent persons to be entitled to relief against a fraudulent conveyance, it is not necessary that the transferor's intention to defraud be directed against any particular person. Fine v. Moamjian, 114 CONN. 226. In many jurisdictions, it is shown that there was mala fides or fraud in fact in the transaction, whether the actual fraudulent intent related to existing persons, or was directed

exclusively against Petitioner, the effect is precisely the same, and persons may, on the strength of such fraud, successfully impeach the conveyance. App. 4,5,6,7.

19. Effect of constructive fraud: Whereas the familiar badges of fraud may, in many instances, be relied on by an existing person as establishing a case for the granting of relief, he must establish fraud in fact, or actual fraud. Petitioner proved fraud in his Petition for a Writ.

20. Some courts take the view that an innocent heir or distributee stands on a better footing in court than does the fraudulent grantee, and have sustained the right of the distributees to attack or set aside the conveyance. Also, a statute may permit the heirs of a fraudulent grantor to bring a suit to set aside a conveyance made in fraud by the grantor.

21. Where it appears that purchaser, Alliance Properties, had knowledge or notice of the fraudulent transfer, he will be held to have acquired the title subject to the rights of the transferor. His right is inferior to that of the persons where it appears that he knew or ought to have known of the fraudulent transfer, having been informed of facts which suggested an investigation of the title. Even though he paid value to the fraudulent transferee, he may not claim priority if he took the title with actual or imputed knowledge of the transferee's fraudulent design. He is chargeable with notice of everything that appears on the face of the deeds constituting his claim of title.

22. A fraudulent conveyance is void or voidable, and will be set aside in a proper proceeding. Farnham v. Schreiber, 111 Conn. 38. The statute of limitations does not have the effect of converting a fraudulent deed into a valid deed by reason of the lapse of the prescribed time; it simply forbids the right of action for relief on the ground of fraud. Hence, if the question as to the fraudulent character of the

deed arises in any way other than in such an action; there is nothing in the statute that forbids its being assailed for fraud.

II. ARGUMENT – STANDARD OF REVIEW – REASONS FOR GRANTING THE WRIT

1. The action to recover the property was filed on 8/17/02, with the Supreme Court. Respondents, Roberta Peck, and Alliance Properties conspired to deprive Petitioner of his property in Milford, on 8/14/02.

2. In the case of an involuntary transfer, such as a foreclosure, which happened to Petitioner, there is a radical difference from the procedure which applies to a voluntary transfer in that the registrar cannot, upon the filing with him of documents purported to make an involuntary transfer, recognize any such transfer unless and until he receives an order of court directing the action which he shall take. These orders are based upon an adjudication by the Supreme Court, determining the rights of Petitioner.

3. Effect of concealment of fraudulent conveyance: does not commence to run until the person discovers, or, by the exercise of ordinary diligence, might have discovered, the fraudulent conveyance. Petitioner discovered the fraudulent conveyance on 9/15/02.

4. The fraudulent grantee is a necessary party defendant in an action to set aside a conveyance as fraudulent, since he has an interest in the subject matter of the suit. A purchaser from the grantee is a necessary party where it is sought to set aside the conveyance to his grantor.

5. Since the ultimate grantee in possession at the time of the decree will be affected by a decree declaring the property in question to have been fraudulently conveyed, that

person is a necessary party to the action. Petitioner is the owner of the property in question.

6. Lienholders and assignees: There is authority that a lienholder is a necessary party defendant in a suit to set aside a fraudulent conveyance. Respondents are the lienholders of the property in question.

7. The Respondents, Attorney for Respondents, Roberta Peck, and Alliance Properties LLC, buyer of the property, are charged with cause of action based upon intentional infliction of emotional distress, or that there has been intentional or reckless conduct, that conduct was so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency, and is to be regarded as atrocious and utterly intolerable in civilized community and that conduct caused emotional distress so severe that no reasonable person should be expected to endure it.

8. The basic purpose of a 42 U.S.C. Sec. 1983, against Respondents, Roberta Peck, Alliance Properties, Meger & Meger, Law Firm, Agent of Gonillo, is to compensate Petitioner for injuries caused by the deprivation of constitutional rights.

9. This court held in Mullane that the statutory provision for notice by publication in a local newspaper, although sufficient as to beneficiaries of a trust whose interest or addresses were unknown to the trustee, was not sufficient notice under the Due Process Clause for known beneficiaries. Mullane v. Central Hanover Tr. Co. 339 U.S. 306. So too, in Lipko, if the State Courts decide to issue an order, see Petition, Appendix 56-59, the State's obligation under the Fourteenth Amendment is: the State owes to each individual that opportunity for a hearing granted at a meaningful time and in a meaningful manner, Armstrong v. Manzo, 380 U.S. 545. although, on 4/15/02, Petitioner was

under the jurisdiction of Federal Courts. This Court has seldom been asked to review probate as an element of due process. The legitimacy of the States' monopoly over techniques of final dispute settlement, comes into question, and raises grave problems for its legitimacy, in situations such as this Petitioner's, when the State's Justice System: 1. Denied Petitioner's review of probate, in Appellate and Supreme Courts; 2. Prosecuted this Petitioner, instead of distributing the Estate; and 3. Manifested having NO judicial machinery, in Connecticut, for the vacation of judgments. American society gets its systematic definition of individual rights and duties, as well as its machinery for dispute settlement, not on the will of individuals, but on the common law model. It is to the courts that individuals look to settle disputes. Within this framework those who wrote our Constitution, the 5th and 14th Amendments, recognized the concept of due process. The State's monopoly over techniques for binding conflict resolution could not be said to be acceptable under the current probate system. It is not surprising, that states have seen fit to oversee most aspects of the probate of an Estate. Two parties must invoke the State's judicial machinery because it is the only forum empowered to settle their disputes. Boddie v. Connecticut, 401 U.S. 371. It is in this Supreme Court that this petitioner thinks that this appeal is properly to be resolved in light of the issues precisely set forth, fraud, malicious prosecution, seizure of person and his property. The relief requested under the 14th Amendment, due process clause Fuentes v. Shevin, 407 U.S. 67: Vacate the fraudulent deed on the Milford property; return the deeded property to A. Lipko Jr.; vacate the judgment liens by E. Lipko and M. Christie on the Milford property; vacate the judgment liens of E.Lipko and M. Christie on the Hamden property; vacate the Appellate Court Sanction Order, Appendix 30 in the Petition, and Damages.

THE PETITIONER
A.LIPKO JR.